IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 824 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMIRBHAI BHANABHAI SAMA (SANDHI)

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

1. Special Criminal Application No. 824 of 2001

MR PJ YAGNIK for Petitioner No. 1

MR D.P. JOSHI, APP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/01/2002

ORAL JUDGEMENT

The petitioner by this petition under Article 226 of the Constitution of India seeks to challenge an order passed by Sub Divisional Magistrate, Viramgam, Division Ahmedabad dated 18.6.2001, passed in exercise of powers

under Section 56A and C of the Bombay Police Act, externing the petitioner for a period of one year from the territories of Ahmedabad Rural, Ahmedabad City, Surendranagar, Mehsana and Gandhinagar Districts on the grounds stated in the petition.

2. Brief facts of the case can be stated thus:

2.1 The petitioner was issued with a notice under Section 59 of the Bombay Police Act, on 14.3.2001, calling upon him to show cause as to why he should not be externed from the areas of Ahmedabad City, Ahmedabad Rural, Surendranagar, Gandhinagar and Kheda Districts for the reasons stated therein.

2.2 The petitioner gave a reply to the said notice stating that he is not involved in the activities alleged; that he has not been convicted; that cases are pending before the Court and that the case is concocted out of jealousy and political rivalry.

2.3 Considering the reply, the externing authority passed the impugned order on 18.6.2001. The said order was carried in appeal before the Government and the Government, by order dated 24th August, 2001, confirmed the externment order impugned herein. The petitioner is therefore before this Court challenging the order of externment.

3. Learned Advocate Mr. Yagnik appearing for the petitioner states that this is a gross case of non-application of mind. The petitioner has not been afforded adequate opportunity of showing cause before passing of the order. To substantiate his submission, he has drawn attention of this Court to the fact that the notice was given for showing cause as to why the petitioner may not be externed from the Districts of Ahmedabad City, Ahmedabad Rural, Surendranagar, Gandhinagar and Kheda, whereas the externment order relates to Districts of Ahmedabad City, Ahmedabad Rural, Surendranagar, Gandhinagar and Mehsana. Thus, the notice was for Kheda besides other districts, whereas the order is in respect of Mehsana district besides other districts. Mr. Yagnik submitted therefore that the order for externing the petitioner from Mehsana District is passed without affording opportunity to the petitioner to show cause why he should not be externed from that district and so far as Kheda District is concerned, that is not considered, though notice was issued therefor no reasons are assigned for not externing him from Kheda District. This is therefore a clear case of

non-application of mind and the petition may therefore be allowed.

4. The petition is opposed to by learned APP Mr. D.P.Joshi.

5. Having regard to the contention raised before this Court, there is substance in the contention raised by Mr. Yagnik for the petitioner. The notice is issued for Kheda district besides other districts considering the allegations made in the notice. No reasons are assigned for externing the petitioner from Kheda District. At the same time, the notice is not issued for externing the petitioner from Mehsana District, but he is externed from Mehsana District also. Principle of natural justice is therefore not followed by the externing authority. The requisite provision of Sec. 59 therefore cannot be said to have been complied with. The order therefore cannot be permitted to stand.

6. The petition is therefore allowed. Order dated 18.6.2001 passed by the externing authority against Shri Amirbhai Bhanabhai Sama and order dated 24.8.2001 passed by the appellate authority, both are hereby quashed and set aside. Rule made absolute. Direct service permitted.

(A.L.Dave,J.)

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